STATE OF MICHIGAN

COURT OF APPEALS

JYOTI A. SHAH,

Plaintiff-Appellant,

v

THE UPJOHN COMPANY,

Defendant-Appellee.

UNPUBLISHED
July 1, 1997

No. 195832
Kalamazoo Circuit Court
LC No. 96-000263-CZ

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(7), and awarding defendant sanctions in the amount of $1,773.75 pursuant to MCR 2.114(D). We affirm the order of summary disposition, but reverse the trial court's award of sanctions to defendant.

Plaintiff is a fifty-three year old naturalized American citizen of Asian origin. Plaintiff was employed by defendant in 1980 as a biochemist, and was terminated by defendant as of February 3, 1994, for insubordination. Following her termination, plaintiff filed a complaint against defendant in the United States District Court for the Western District of Michigan. The district court dismissed plaintiff's claims for failure to state a genuine issue of material fact. On January 30, 1996, plaintiff filed the present action in Kalamazoo Circuit Court. In an opinion and order dated June 3, 1996, the trial court granted summary disposition in favor of defendant pursuant to MCR 2.116(C)(7) on the ground that plaintiff's complaint was barred by the doctrine of res judicata. In addition, the court awarded sanctions to defendant pursuant to MCR 2.114(D), and ordered plaintiff to pay defendant's attorney fees and costs in the amount of $1,773.75.

I

Plaintiff first claims that the trial court erred in applying the doctrine of res judicata to dismiss her action based on her prior federal court case against defendant. Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those

essential to a prior action. *Ozark v Kais*, 184 Mich App 302, 307; 457 NW2d 145 (1990). The purpose of res judicata is to avoid relitigation of claims; the doctrine recognizes that endless litigation leads to vexation, confusion, and chaos for litigants and inefficient use of judicial resources. *Bhama v Bhama*, 169 Mich App 73, 81; 425 NW2d 733 (1988). The applicability of res judicata is a question of law that is reviewed de novo on appeal. *Husted v Auto Owners Ins Co*, 213 Mich App 547, 555; 540 NW2d 743 (1995).

> There are three prerequisites to the application of the doctrine of res judicata:
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> (1) the prior action must have been decided on the merits;
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> (2) the issues raised in the second case must have been resolved in the first; and
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> (3) both actions must have involved the same parties or their privies. [*Roberts v City of Troy*, 170 Mich App 567, 577; 429 NW2d 206 (1988).]

The third requirement is not in dispute in this case because the parties are the same in both cases. Plaintiff claims that the first requirement was not satisfied in this case because her complaint was dismissed by the federal court without the opportunity to fully and fairly litigate her claims. A summary disposition for failure to state a genuine issue of material fact is a judgment on the merits which bars relitigation on the basis of res judicata. *Roberts*, *supra* at 577. Under FRCP 41(b) an order for dismissal, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under FRCP 19, operates as an adjudication upon the merits, unless the dismissal otherwise specifies. Moreover, the order and opinion of the district court specified that the case was dismissed with prejudice, which is indicative of a decision on the merits. See *Ingham Co Employees' Ass'n v Ingham Circuit* Court, 170 Mich App 118, 122; 428 NW2d 7 (1988).

The second prerequisite, that the issues raised in the second case must have been resolved in the first, is the primary matter at issue in this appeal. Plaintiff claims that res judicata was inapplicable because her claims in this action are new and different from the claims she advanced in her earlier federal court case. In her federal complaint, plaintiff alleged generally that she was in an automobile accident in 1986 from which she suffered residual effects including weak arms, and rib and knee pain. Plaintiff further claimed that she was diagnosed in 1990 with eosinophelia ("EOS"), a blood disorder associated with the symptoms of nausea, dizziness, headaches, fatigue, skin rashes, dyspnea (difficulty breathing), and watery eyes. According to plaintiff, her EOS was being caused by biological allergens and solvents present in the laboratory; consequently, she sought positions outside of the laboratory and ultimately refused to work in the lab due to her illness. Plaintiff alleged that Greg Szpunar, her supervisor as of July 1989, refused to acknowledge her physical infirmities and threatened to fire her if she did not work in the lab.

In Count I of her federal complaint, plaintiff claimed that defendant failed to accommodate her disability, EOS, in violation of the Americans with Disabilities Act ("ADA"), 42 USC 12101 *et seq*. In Count II, plaintiff alleged that she was terminated based upon her disability in violation of the ADA.

Counts III and IV of plaintiff's federal complaint make the equivalent claims under the auspices of the Michigan Handicapper's Civil Rights Act ("MHCRA"), MCL 37.1101 *et seq.;* MSA 3.550 (101) *et seq*. In Count V, plaintiff alleged intentional infliction of emotional distress.

On January 30, 1996, plaintiff filed the instant complaint in pro per in circuit court. Plaintiff claimed that she was terminated in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2202; MSA 3.548(202); that she was terminated in violation of MHCRA, that her termination was in breach of her "just cause" employment contract with defendant, that her termination violated the Family and Medical Leave Act, 29 USC 2601 *et seq*., and that defendant, through its employee Gregory Szpunar, intentionally inflicted emotional distress upon her.[1]

The test to determine whether two actions involve the same subject is whether the facts are identical in both actions or whether the same evidence would sustain both actions. If the same facts or evidence would sustain both, the two actions are the same for the purpose of res judicata. *Jones v State Farm Mutual Automobile Ins Co*, 202 Mich App 393, 401; 509 NW2d 829 (1993). If different facts or proofs would be required, res judicata does not apply. *VanDeventer v Michigan Nat'l Bank*, 172 Mich App 456, 464; 432 NW2d 338 (1988). Plaintiff sets forth the same background facts in her federal and state complaints, and both complaints generally allege that she was terminated wrongfully. However, plaintiff's federal complaint was limited to failure to accommodate and termination based on a disability or handicap and intentional infliction of emotional distress, while her state court complaint contains several different claims such as age, sex, and national origin discrimination, breach of employment contract, and violation of the Family Medical Leave Act. These causes of action would require different proofs than those named in her federal complaint.

However, Michigan has adopted the "broad" application of res judicata which bars litigation in the second action not only of those claims actually litigated in the first action, but claims arising out of the same transaction which the parties, exercising reasonable diligence, could have litigated but did not. *Martino v Cottman Transmission Systems, Inc*, 218 Mich App 54, 57-58; 554 NW2d 17 (1996); *Jones, supra* at 401. Although plaintiff raises new causes of action in her state case, the same operative facts that gave rise to her claim for damages in her federal action are claimed to give rise to her instant causes of action. Therefore, plaintiff should have brought all of her claims before the federal court. Plaintiff further argues that she could not have brought all of the claims now asserted in state court as part of her federal case because she did not discover or obtain the evidence of those claims until the discovery period of her federal case. A second proceeding is not barred if there are changed or new facts. *In re Pardee*, 190 Mich App 243, 248; 475 NW2d 870 (1991). Even taking plaintiff's allegations as true, plaintiff could have timely amended her complaint during the discovery period to add her new claims. Instead, plaintiff remained silent until after her federal case was dismissed.

Defendant, citing *Cemer v Marathon Oil Co*, 583 F2d 830 (CA 6, 1978), claims that federal law applies in this case for purposes of determining the preclusive effect of the federal judgment. *Cemer* stands for the proposition that the state court cannot ignore the effect of a prior federal adjudication. This Court agrees that the federal court's dismissal of plaintiff's complaint should be viewed as a final adjudication on the merits. However, a determination that the prior action was a final

adjudication on the merits is only part of the res judicata analysis. This Court applies Michigan law to determine whether a claim filed in a Michigan court is barred by res judicata, even when the prior claim was adjudicated in federal court. See *Roberts, supra*; *Thomas*

v MESC, 154 Mich App 736; 398 NW2d 514 (1986); *Annabel v Link Lumber Co*, 115 Mich App 116; 320 NW2d 64 (1982), rev'd in part 417 Mich 950 (1983). Although the trial court erred to the extent that it relied on *Cemer* and approved defendant's argument that federal law applied in determining whether res judicata barred the instant case, the trial court properly dismissed plaintiff's case on the basis of res judicata.

II

Plaintiff next claims that the trial court erred in awarding defendant sanctions under MCR 2.114(D). An award of sanctions under MCR 2.114(D) is reviewed by this Court under a clearly erroneous standard. *Contel Systems Corp v Gores*, 183 Mich App 706, 710-711; 455 NW2d 398 (1990). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. *Richmond Twp v Erbes*, 195 Mich App 210, 224; 489 NW2d 504 (1992).

MCR 2.114(D) provides that the signature of a party on a pleading constitutes a certification by the party that:

> (1) he or she has read the document;
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> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
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> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

MCR 2.114(E) further provides that if the document is signed in violation of the rule, the court, on the motion of a party or its own initiative, shall impose upon the person who signed it an appropriate sanction. It is clear from the language of the rule that sanctions may be imposed upon unrepresented parties. *People v Herrera*, 204 Mich App 333, 338; 514 NW2d 543 (1994). The court found that plaintiff violated MCR 2.114(D)(2) because her complaint was clearly barred by res judicata and, thus, was not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. Consequently, the court sanctioned plaintiff in the amount of $1773.75, the amount of defendant's attorney fees and costs.[2]

This Court is left with a definite and firm conviction that a mistake was made by the court in sanctioning plaintiff. *Erbes*, *supra* at 224. Because plaintiff's complaint contained several new causes of action, it was not obvious that her case was barred by res judicata, a complicated legal doctrine. In addition, the court "took into consideration" the fact that plaintiff has been involved in several legal and administrative proceedings against defendant. Plaintiff's prior legal and administrative claims against defendant may have offered support for a conclusion that plaintiff had a malicious intent or filed her complaint to harass defendant in violation of MCR 2.114(D)(3). However, the court specifically found

that plaintiff had no such "malicious or evil" intent in filing her complaint. Absent a finding of wrongful intent, plaintiff should not be penalized for having pursued her rights in those administrative and judicial forums.

Affirmed in part and reversed in part.

/s/ Hilda R. Gage
/s/ Gary R. McDonald
/s/ E. Thomas Fitzgerald

[1] In plaintiff's brief, she states that she included a claim for defamation; however, no such claim is apparent from the complaint.

[2] Sanctions were awarded under the authority of MCR 2.114, not the Elliott-Larsen Civil Rights Act ("ELCRA"), MCL 37.2802; MSA 3.548(802); therefore, it is inapposite whether attorney's fees could have been awarded to defendant under the authority of ELCRA.